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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 467

DAVID JUAIRE,

Petitioner,

v.

WALTER MARSHAK, INC.,

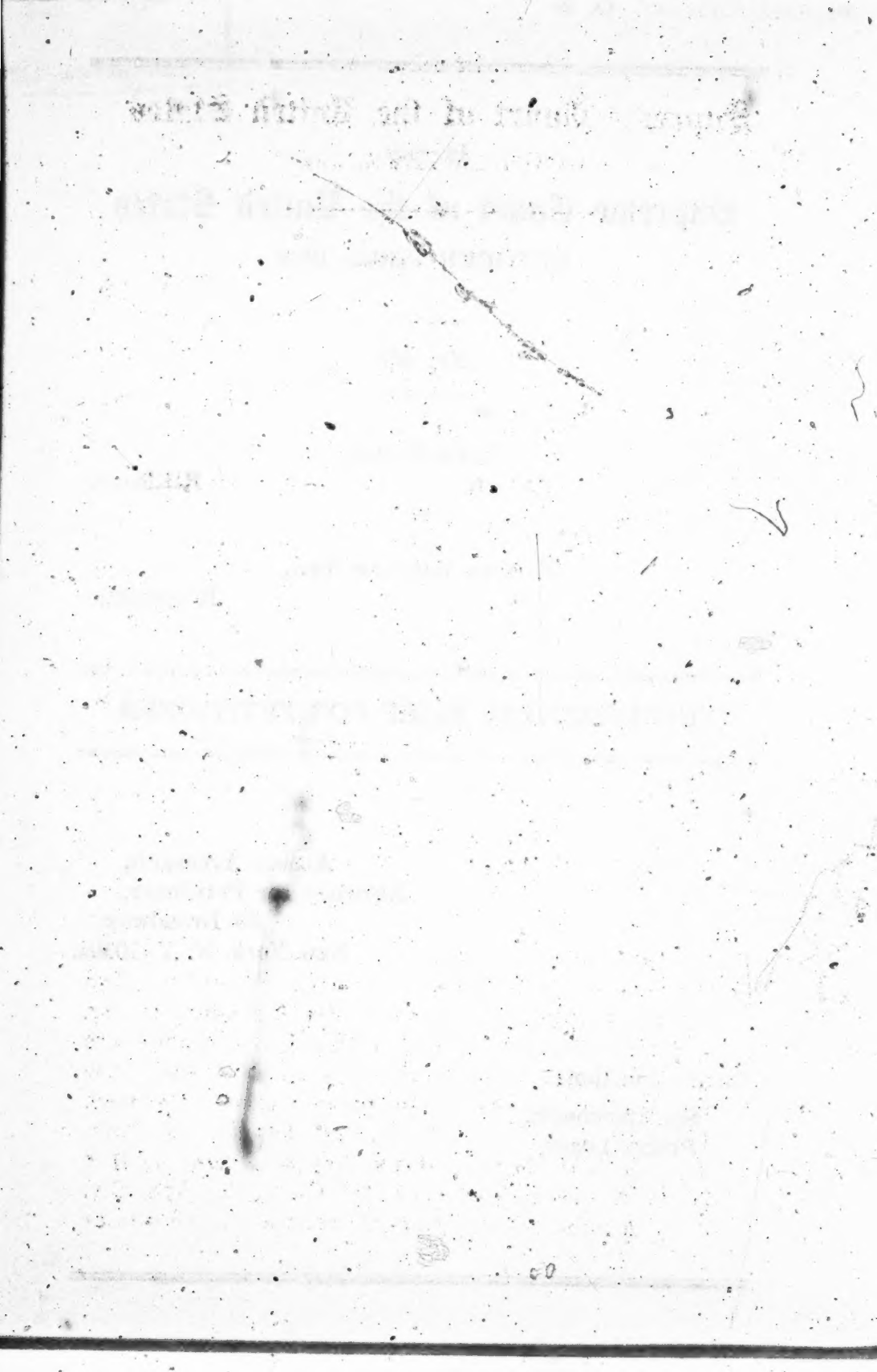
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

ALBERT AVERBACH,
Attorney for Petitioner,
50 Broadway,
New York, N. Y. 10004.

On the Petition:

SOL LEFKOWITZ,
PIERRE LORSY.



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Pursuant to Rule 24, subdivision 5, the attention of the Court is called to a new case not officially reported until the September 11, 1968 edition of the Law Reports of the State of New York.

In *Mahon* v. *Giordano*, 30 A. D. 2d 782, the Appellate Division made the following pertinent remarks relating to the inadmissibility of police reports under the law of the State of New York. Frances Brown was the operator of a car. The disputed issue was the driving of Mrs. Brown. The Court stated:

> "The police reports incorporated Mrs. Brown's version of the accident. In our judgment their admission was prejudicial error. The trial court ruled the fact that the reports were made in connection with police business was conclusive on their admissibility. The records reflected statements of the defendant Brown and the authorities are clear that police reports are not admissible to establish the main fact where the information contained in the police records is hearsay. (*Johnson* v. *Lutz*, 253 N. Y. 124; *Yeargans* v. *Yeargans*, 24 A D 2d 280; *Gutin* v. *Mascali & Sons*, 11 N Y 2d 97; *Needle* v. *New York Rys. Corp.*, 227 App. Div. 276.) Admissions or prior inconsistent statements or

declarations against interest are not involved. (See *Kelly* v. *Wasserman*, 5 N Y 2d 425; *Chemical Leaman Tank Lines* v. *Stevens*, 21 A D 2d 556; *Zaulich* v. *Tompkins Sq. Holding Co.*, 10 A D 2d 492.) Mrs. Brown's version of the accident was exculpatory; it was not an admission against interest. The officers' credibility was not in issue; they had recorded facts conveyed by Mrs. Brown of which they had no personal knowledge. One of the vices of the reports is they appeared to the jury as official determinations after an investigation. (*Wilson* v. *Bungalow Bar Corp. of America*, 285 App. Div. 1191.)"

This language concisely parallels petitioner's position on this point, demonstrating beyond peradventure that New York law does not permit introduction of the report when it reflects exculpatory statements of the defendant. The further vice that it appears as an official determination after an investigation is also duplicated in this case, when the officer wrote at the bottom of page 1 of his report under Operator Violations that the Nardin car, vehicle No. 1 had committed "no violation".

Prejudicial error having been committed here, a new trial is mandated. This court's statement of the law in this "unclear" area is essential to the administration of justice in the United States Courts.

October 30, 1968.

Respectfully submitted,

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SOL LEFKOWITZ,
PIERRE A. LORSY,
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